

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.W., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS HEALTH ADMINISTRATION,  
Portland, OR, Employer**

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**Docket No. 13-529  
Issued: May 24, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 4, 2013 appellant filed a timely appeal from a November 14, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for a hearing by the Branch of Hearings and Review. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the nonmerit decision by OWCP. The last merit decision of record was OWCP's March 15, 2012 decision. Because more than 180 days has elapsed between the last merit decision and the filing of this appeal on January 4, 2013, the Board lacks jurisdiction to review the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> For decisions issued prior to November 19, 2008, a claimant had up to one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for a hearing under 5 U.S.C. § 8124.

## **FACTUAL HISTORY**

On October 12, 2011 appellant, then a 46-year-old social worker, filed an occupational disease claim (Form CA-2) alleging that she developed emotional distress and trauma as a result of her federal employment duties. She stated that she first became aware of her condition on January 1, 2000 and of its relationship to her employment on January 2, 2000. Appellant notified her supervisor on October 12, 2011.

By letter dated October 19, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and asked that she respond to the provided questions within 30 days. In another October 19, 2011 letter, OWCP requested that the employing establishment provide information pertaining to appellant's emotional condition claim.

In support of her claim, appellant submitted numerous documents including a position description, copies of e-mails and medical reports documenting her treatment.

By decision dated March 15, 2012, OWCP denied appellant's emotional claim finding that the evidence of record failed to establish that her injury was causally related to the accepted employment factor. It found that the evidence of record only established one compensable factor of employment having occurred in 2008 when appellant found a deceased veteran in T51 room 200 and watched the attempt to resuscitate the patient. The patient did not survive.

By letter dated September 29, 2012, appellant stated that she filed her claim on October 12, 2011 and sent in additional information on April 17, 2012. She stated that the information was received by the Department of Labor (DOL) on April 19, 2012 and that she had not gotten a response, asking about the status of her claim.<sup>3</sup> Appellant further provided additional details regarding her emotional condition claim.

By letter dated October 4, 2012, OWCP responded to appellant's September 29, 2012 letter and informed her that her claim was denied by decision dated March 15, 2012. It provided her with an additional copy of the decision accompanied with her appeal rights.

On October 6, 2012 appellant submitted an appeal request form requesting both review of the written record and reconsideration of the March 15, 2012 decision. On the appeal request form, she noted that she had previously sent the request in on April 17, 2012.

In an October 11, 2012 OWCP telephone memorandum, it contacted appellant notifying her that it had received her appeal request form dated October 6, 2012. It informed her that she

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<sup>3</sup> The Board notes that a medical report was received by OWCP on April 16, 2012. Witness statements, e-mails and medical reports were also submitted and received by OWCP on April 27, 2012.

had checked both review of the written record and reconsideration of the March 15, 2012 decision when asked what avenue she would like to pursue. Appellant requested review of the written record over reconsideration. The file was documented as review of the written record.

A narrative statement was received by OWCP on October 11, 2012 dated April 17, 2012. Appellant stated that she was attempting to gather information since having found out her claim was denied and provided additional factual information surrounding the circumstances of her claim. In support of her claim, she submitted additional factual and medical evidence.

By decision dated November 14, 2012, Branch of Hearings and Review denied appellant's request for a review of the written record finding that her request was not made within 30 days of the March 15, 2012 OWCP decision. The Branch of Hearings and Review further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which established that appellant had sustained an injury in the performance of duty.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides that before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.<sup>4</sup> Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.<sup>5</sup> OWCP's regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>6</sup>

Additionally, the Board has held that OWCP, in its broad discretionary authority in the administration of FECA,<sup>7</sup> has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.<sup>8</sup> OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.<sup>9</sup>

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<sup>4</sup> 5 U.S.C. § 8124(b)(1).

<sup>5</sup> 20 C.F.R. § 10.615.

<sup>6</sup> *Id.* at § 10.616(a).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>9</sup> *Teresa M. Valle*, 57 ECAB 542 (2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

## ANALYSIS

In the present case, appellant requested a review of the written record on October 6, 2012 and OWCP found that the reconsideration request was postmarked on that same date.<sup>10</sup> Her request was made more than 30 days after the date of issuance of OWCP's prior decision dated March 15, 2012. Therefore, OWCP properly found in its November 14, 2012 decision that appellant was not entitled to an examination of the written record as a matter of right because her request for an examination of the written record was not made within 30 days of its March 15, 2012 decision.<sup>11</sup>

The Board notes that on the October 6, 2012 appeal request form, appellant stated that she had previously sent her request in on April 17, 2012. Review of the record shows that OWCP never received an April 17, 2012 appeal request form and appellant has not provided any evidence to establish that these documents were submitted.<sup>12</sup> Moreover, even if she had submitted an appeal requesting review of the written record on April 17, 2012, her request would have still been untimely as it was past 30 calendar days from OWCP's March 15, 2012 decision.

The Board has held that OWCP has the discretion to hold hearings where no specific legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.<sup>13</sup> OWCP's authority to grant or deny a written review of the record is analogous to its authority to grant or deny a hearing. Its procedures require that it exercise its discretion and explain, as appropriate, its decision to grant or deny an examination of the written record when a claimant's request is not granted as a matter of right. Those procedures are a proper interpretation of FECA and Board precedent.<sup>14</sup>

In its November 14, 2012 decision, OWCP properly exercised its discretion by stating that it had considered the matter and had denied appellant's request for an examination of the written record because the issue of causal relationship could be addressed through a reconsideration application. The Board has held that the only limitation on OWCP's authority is reasonableness and an abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>15</sup>

In this case, the evidence of record does not indicate that OWCP abused its discretion in its denial of appellant's request for an examination of the written record.

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<sup>10</sup> The Board notes that appellant's October 6, 2012 appeal request form requested both review of the written record and reconsideration of OWCP's March 15, 2012 decision.

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602 (May 1991).

<sup>12</sup> *G.D.*, Docket No. 07-1101 (issued September 11, 2007).

<sup>13</sup> *Henry Moreno*, 39 ECAB 475, 482 (1988).

<sup>14</sup> *Michael J. Welsh*, 40 ECAB 994 (1989).

<sup>15</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

**CONCLUSION**

The November 14, 2012 decision of OWCP denying appellant's request for an examination of the written record is affirmed.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated November 14, 2012 is affirmed.

Issued: May 24, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board